

The claimant suffered injury when a cow kicked a gate which then struck the claimant in the head. Claimant seeks reimbursement pursuant to K.A.R. 51-9-11 to pay her common law husband for transporting her from the hospital and to various medical appointments.

This is an appeal from a preliminary hearing order. The issue raised by claimant is not a jurisdictional issue and is not subject to review at this stage of the proceedings.

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only allegations that an administrative law judge exceeded his or her jurisdiction.¹ This includes review of the preliminary hearing issues listed in K.S.A. 44-534a as jurisdictional issues, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act. In Carpenter,² the Court held:

The term "certain defenses" in K.S.A. 1998 Supp. 44-534a refers to defenses subject to review by the Workers Compensation Board only if they dispute the compensability of the injury under the Workers Compensation Act. (Syllabus 3.)

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

The Administrative Law Judge has the authority to grant or deny payment of medical expense (including that expense related to travel for medical reasons) and, therefore, has not exceeded his jurisdiction and authority in that regard. Since the issue raised is not jurisdictional, the Board must, without ruling on the merits, dismiss the appeal. The issue would be subject to review from a final award.

The Administrative Law Judge's preliminary Order did not address the issue claimant had raised regarding reimbursement for costs for transportation to obtain medical treatment. While K.S.A. 44-534a does require that the Order be issued within five days, there is nothing in the statute which denies the Administrative Law Judge jurisdiction

¹K.S.A. 44-551.

²Carpenter v. National Filter Service, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³Allen v. Craig, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

should the order be issued at a later time. If claimant's position is the Administrative Law Judge exceeded his jurisdiction by failing to address the issue, then her remedy is provided in K.A.R. 51-3-5a(b) rather than by appeal to the Board. As previously noted, the Board does not have jurisdiction to address the issue at this stage of the proceedings.

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.⁴

AWARD

WHEREFORE, the Board dismisses claimant's appeal of the March 15, 2002, Order entered by Administrative Law Judge Bryce D. Benedict.

IT IS SO ORDERED.

Dated this _____ day of May 2002.

BOARD MEMBER

c: Charles W. Hess, Attorney for Claimant
John D. Jurcyk, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

⁴K.S.A. 44-534a.